

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-008084
Issue No.: 2001; 3001
Case No.: ██████████
Hearing Date: July 29, 2015
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on July 29, 2015, from Warren, Michigan. Participants included the above-named Claimant. ██████████ Claimant's son, testified and appeared as Claimant's authorized hearing representative (AHR) and translator. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly denied Claimant's Food Assistance Program (FAP) application.

The second issue is whether MDHHS properly limited Claimant's Medical Assistance (MA) eligibility to emergency services only (ESO).

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing MA recipient of emergency services only (ESO).
2. Claimant was a member of a 2-person household which included her spouse.
3. Claimant entered the United States on December 23, 2010; Claimant's spouse arrived a few weeks later.
4. Claimant's green card category was IR5 (based on being a parent of a United States citizen).

5. On April 29, 2015, Claimant applied for FAP benefits for her and her spouse.
6. On April 29, 2015, MDHHS denied Claimant's FAP application due to Claimant and her spouse failing to meet citizenship or qualified alien requirements.
7. On May 4, 2015, Claimant requested a hearing to dispute the denial of FAP benefits and the restriction of MA benefits to ESO.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing, in part, to dispute the denial of a FAP benefit application on behalf of herself and her spouse. MDHHS denied Claimant's application after determining that Claimant had no eligible FAP group members. MDHHS disqualified Claimant and her spouse due to a failure to meet FAP benefit citizenship requirements.

For FAP benefit eligibility, a person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225 (10/2014), p. 1. Any of the following persons are considered to have an acceptable alien status (*Id.* pp. 31-33):

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AS, SI or SQ
- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years

Persons with a class code other than RE, AM or AS who entered the United States after 8/22/96 may be eligible for FAP benefits if any of the following circumstance are applicable (*Id.*, p. 32.):

- has 40 countable Social Security credits
- age 65 or older as of 8/22/96 and was residing in United States on 8/22/96
- Hmong or Laotian (with other requirements)
- received SSI on 8/22/96
- currently blind or currently disabled
- under 18 years of age

Claimant and her spouse were immigrants. Claimant entered the United States from Bangladesh on December 23, 2010. Claimant's spouse entered the United States after Claimant. Thus, Claimant and her spouse were United States residents for less than 5 years as of the date her FAP eligibility was denied.

Claimant's permanent resident alien class code was IR5. Claimant presented no evidence suggesting that her spouse had a different category code. Claimant presented no evidence suggesting that she or her spouse met any of the requirements of being a qualified alien.

Consideration was given to the possibility that Claimant was disabled. Though it is improbable that Claimant could work, Claimant does not meet any of the circumstances that would qualify as a disability (see *Id.*, pp. 4-5). Circumstances which would justify a label of disability would be receipt of any of the following: Social Security Administration benefits based on disability, veteran disability benefits, a child of a disabled veteran, or a spouse of a disabled veteran. *Id.*

As a resident of the United States of less than 5 years, Claimant and her spouse, barring atypical circumstances, are not eligible for FAP benefits. Presented evidence did not suggest atypical circumstances exist. It is found that MDDHS properly disqualified Claimant and her spouse from FAP eligibility. Accordingly, Claimant's FAP application was properly denied.

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing, in part, to dispute a determination that she was eligible for MA benefits (ESO). ESO Medicaid is understood to only cover emergency room visits but not ongoing medical treatment. Claimant testified that she is in the first stage of pancreatic cancer and is in dire need of medical coverage so she may pursue medical treatment.

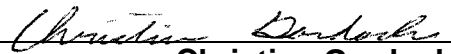
Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225 (10/2014), p. 2. To be eligible for full MA coverage a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. *Id.* For MA benefits, qualified alien status can also be met for aliens admitted into the U.S. with a class code on the I-551 other than RE, AM or AS. *Id.*, p. 7. For non-qualified aliens, MA eligibility is limited to emergency services only for the first five years in the United States. *Id.*, p. 8.

It is completely appreciated that Claimant is in need of medical treatment due to a cancer diagnosis. Unfortunately, ESO eligibility cannot be upgraded based on a client's health needs.

Claimant's residency of less than 5 years and immigration code of IR5 does limit Claimant to receipt of Medicaid ESO. Accordingly, it is found that MDHHS properly restricted Claimant's Medicaid eligibility to ESO due to Claimant's citizenship status.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Claimant's application dated April 29, 2015 requesting FAP benefits. It is further found that MDHHS properly restricted Claimant's Medicaid eligibility to ESO. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **7/31/2015**

Date Mailed: **7/31/2015**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

[REDACTED]